

PATENT

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Date: 4 February 2010

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THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Randall K. Curey
Serial No. : 09/821,537
Filing Date : 28 March 2001
For : Partitioned Executive Structure for
Real-Time Programs
Group Art Unit : 2448
Examiner : Philip C. Lee
Attorney Docket No. : NG(NSD)018807 US CIP

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REPLY BRIEF

Sir:

In response to an Examiner's Answer issued on December 22, 2009,

Appellant presents this Reply Brief.

A. Claims 1 and 26

On pages 7-9 of the Appeal Brief, Appellant's representative set forth reasons that U.S. Patent No. 4,109,311 to Blum, et al. ("Blum") does not anticipate claims 1 and 26. In particular, Appellant's representative set forth reasons that Blum does not disclose that multiple sequences of time are assigned to each software package of a plurality of software packages, and that a subset of the plurality of software packages are executed during predetermined time intervals defined by the assigned sequences of time, as recited in claims 1 and 26. In response, the Examiner stated the following:

It is noted that features upon which applicant relies (i.e., multiple sequences) are not recited in the rejected claims (Examiner's Answer, Page 16).

Appellant's representative respectfully submits that the Examiner's statement illustrates that claims 1 and 26 have been misinterpreted. Claims 1 and 26 each recite (means for, as recited in claim 26) "assigning a sequence of time intervals to each software package..." One of ordinary skill in the art would understand and appreciate that the recitation of the assignment of more than one sequence of time interval is equivalent to multiple sequences of time being assigned to each software package, as argued in the Appeal Brief. Therefore, Appellant's representative respectfully submits that the Examiner has misinterpreted claims 1 and 26.

Furthermore, the Examiner also states the following:

Blum teaches a time slice is subdivided into six time slice intervals and the six time slice intervals are divided equally among three programs. Thus, each program is serviced twice during the assumed six time slice cycles (Examiner's Answer, Page 17, citing Col. 6, Lines 43-52 of Blum).

Appellant's representative respectfully submits that the Examiner is interpreting the cited section of Blum too broadly. As noted in the Appeal Brief,

page 9 of the decision by the Board of Patent Appeals and Interferences (BPAI) issued on September 18, 2008 for the present application states that Blum discloses generating a recurring set of time slice intervals and assigning a time slice to a particular program (emphasis added). Thus, Appellant's representative respectfully submits that the cited section of Blum should be interpreted as assigning a single time slice to a program. Nothing in the BPAI decision would imply Blum discloses that more than one time slice is assigned to a particular program, as contended by the Examiner. Accordingly, Appellant's representative maintains that Blum does not disclose assigning a sequence of time intervals to each software package of a plurality of software packages, as recited in claims 1 and 26. Thus, for at least the foregoing reasons, as well as those stated in the Appeal Brief, Blum does not anticipate claims 1 and 26. Therefore, withdrawal of this rejection is respectfully requested.

B. Appealed Claims 21 and 46

On pages 11-13 of the Appeal Brief, Appellant's representative set forth reasons that it would not have been obvious to one of ordinary skill in the art to combine and modify the teachings of Blum with the teachings of U.S. Patent No. 6,223,201 to Reznak ("Reznak") in a manner that would render claims 21 and 46 obvious. In particular, Appellant's representative argued that combining and modifying Blum and Reznak in a manner that would make claims 21 and 46 obvious would require a substantial redesign of Blum that would change a basic principle of Blum's operation since on page 14 of the Examiner's Answer, (which was copied from page 12 of the Final Office Action issued on August 3, 2009) the Examiner states the following:

[h]owever, Blum does not teach when the execution of a software package extends into a time interval assigned to another software package (Examiner's Answer, Page 18).

In response to the above arguments by Appellant's representative, the Examiner stated the following:

Blum teaches dynamically changing the time slice assignment. Blum teaches the individual programs can automatically add to their share of computing time (col. 5, lines 18-19). A program can add to its computing time by taking the computing time (e.g., time slices) of other programs (col. 5, lines 18-23; col. 12, lines 28-31) **This means a program in Blum's system can execute in the computing time that is associated with a different program** (emphasis added; Examiner's Answer, Page 18).

Appellant's representative submits that the Examiner's statement provided on page 12 in the Final Office Action, and reiterated on page 14 of the Examiner's Answer is in direct conflict with the (emphasized) Examiner's response to Appellant's representative's arguments regarding the reasoning related to the obviousness of combining and modifying the teachings of Blum and Reznak with respect to claims 21 and 46. Appellant's representative respectfully submits that such a dramatic reversal of positions in the interpretation of Blum in the Examiner's Answer denies Appellant's representative an adequate opportunity to respond to the Examiner's Arguments.

Moreover, Appellant's representative respectfully submits that such a direct conflict of positions taken by the Examiner constitutes a failure of the Examiner to establish a *prima facie* case of obviousness with respect to claims 21 and 46. That is, since the Examiner appears to contend both that (1) Blum does not teach when the execution of a software package extends into a time interval assigned to another software package and that (2) Blum's system can execute in the computer time that is associated with a different program, Appellant's representative submits that the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 21 and 46.

Further still, as noted by the Examiner in the Examiner's Answer, Blum discloses dynamically changing the time slice assignment. Blum discloses the individual programs can automatically add to their share of computing time (See Blum, Col. 5, Lines 18-19). In Blum, a program can add to its computing time by taking the computing time of other programs (See, Blum Col. 5, Lines 20-21). Thus, the "dynamic" time slice assignment disclosed in Blum ensures that at no time does a program execute during computer time assigned to other programs. That is, in Blum, once a given program appropriates the time assigned to the other programs, that time slice is reassigned to the given program. Thus, during the execution of the given program, the associated time slices occurring during the execution of the given program are all assigned to the given program, not to the other programs. Accordingly, Appellant's representative submits that the Examiner's original (and reiterated) interpretation of Blum is correct, that Blum does not teach when the execution of a software package extends into a time interval assigned to another software package. Accordingly, Appellant's representative submits that the arguments set forth in the Appeal Brief regarding the nonobviousness of combining and modifying the teachings of Blum and Reznak with respect to claims 21 and 46 are valid, and have not been adequately addressed by the Examiner. Thus, withdrawal of this rejection is respectfully requested.

CONCLUSION

In view of the foregoing remarks, Appellant's representative respectfully submits that the present application is in condition for allowance. Appellant's representative respectfully requests reconsideration of this application and that the application be passed to issue.

No additional fees should be due for this Reply Brief. In the event any fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to Deposit Account No. 08-2025.

Respectfully submitted,

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